

Joint Committee on Taxation
September 14, 1989
JCX-50-89

ADDITIONAL TECHNICAL CORRECTIONS

A. Low-Income Housing Tax Credit

1. The provision clarifies that students in governmentally-supported job training programs, including the Job Partnership Training Act and similar Federal, State or local programs, are deemed to be eligible tenants for purposes of the credit.
2. The operation of the credit in the case of trusts and estates is clarified to provide that the amount of credit and any penalty with respect to the credit is apportioned between beneficiaries and a trust or estate on the basis of the income allocable to each.
3. The provision clarifies that, in the case of a disposition of an ownership interest during the course of a calendar year, the credit is to be allocated pro rata between the seller and purchaser according to the number of days of ownership.
4. In order to carry out legislative intent, the provision authorizes the Treasury Department to issue regulations permitting housing credit agencies to correct administrative errors and omissions with respect to allocations of the credit.
5. The provision clarifies that a person purchasing an interest in a building (including an interest in a partnership owning credit property) steps into the shoes of the previous owner of such interest for purposes of the credit.

These provisions will be effective as if included in the Tax Reform Act of 1986.

B. Treatment of Certain Property Subject to Use Restrictions Due to Financing With Qualified 501(c)(3) Bonds

The provision clarifies two circumstances in which property acquired with the proceeds of qualified 501(c)(3) bonds will be treated as new property for purposes of section 145(d)(2)(A) and, thereby, not subject to the income targeting requirements of section 142(d):

(1) if the housing is financed by sources other than tax-exempt debt and is later refinanced with tax-exempt debt, the facility is not considered "existing" housing for purposes of section 145(d) if there was a reasonable expectation that the facility would be so refinanced and the facility was in fact so refinanced within a reasonable period; and

(2) if, for the purpose of a tax-exempt financing to replace the taxable financing, the initial use of a property was pursuant to a taxable financing and, at the time of the taxable financing, State law prohibited tax-exempt financing for the property so financed, then the property will be treated as new property.

The provision will be effective as if included in the Technical and Miscellaneous Revenue Act of 1988.

C. Insurance Provision: Special Estimated Tax Payments

The provision clarifies that the earnings and profits of any corporation is not to be reduced by the deduction allowed under section 847 for unreversed discount or increased by inclusions required under section 847. For purposes of the alternative minimum tax, however, the adjusted current earnings of a corporation is to be reduced by the deduction allowed under section 847 and increased by the inclusions required under section 847.

D. Excise Tax Provisions

1. Undenatured distilled spirits

The provision corrects an omission in the exemption for educational institutions from the distilled spirits occupational tax to apply to procuring less than 25 gallons of distilled spirits free of tax, as well as specially denatured distilled spirits.

2. Excise tax on bulk cigar imports

The excise tax on imported bulk cigars would be imposed on shipment of cigars after repackaging into consumer packages. Imposition of the tax at this point allows transfer of bulk cigars under bond from a foreign trade zone to an importer's business site where the cigars are repackaged. The proposal corrects an unintentional amendment in the Omnibus Budget Reconciliation Act of 1986 which imposed the tax when imported bulk cigars were transferred from a foreign trade zone. Since cigars are not imported in packaging appropriate for sales to consumers, there has been a virtual cessation of cigar imports.

E. Permit Amounts in the Vaccine Injury Compensation Trust Fund to be Used for Administrative Expenses

The provision would allow funds (but not to exceed \$6 million annually) from the Vaccine Injury Compensation Trust Fund to be available, as provided in appropriations Acts, for the payment of administrative expenses of the National Vaccine Injury Compensation Program.

F. Corporate Tax Provisions: Relating to Tax Imposed on Certain Built-In Gains of S Corporations

1. Reduction in S corporation income.--The provision clarifies that the amount of any built-in gains tax paid by an S corporation reduces the amount of S corporation income that is taxed to the S corporation shareholders.

2. Reduction in built-in gains tax.--The provision clarifies that any minimum tax credit carryover of an S corporation reduces any built-in gains tax of such S corporation.

G. Minimum Tax Provision: Clarifying Treatment of Disqualifying Dispositions of Certain Stock

The provision clarifies that the minimum tax rules applicable to a disqualifying disposition of stock acquired pursuant to the exercise of an incentive stock option where the amount realized is less than the value at the time of exercise follows the regular tax rules of section 422A(c)(2) where the stock is disposed of in the same taxable year the option is exercised. Thus, the amount included in alternative minimum taxable income will not exceed the amount realized on the sale or exchange of the stock over the adjusted basis of the stock.

H. Estate and Gift Tax Provisions

1. Amounts includible in gross estate

Amount included in estate when creation of joint tenancy constituted completed gift.--If the creation of a joint tenancy between citizen and noncitizen spouses resulted in a gift prior to July 14, 1988, only a portion of the joint tenancy property would be included in the decedent spouse's estate.

2. Marital deduction to the estate and gift tax

Effect of treaties.--Under the amendment, denial of the marital deduction for property passing from a U.S. citizen to a noncitizen spouse would override a marital deduction granted by a conflicting treaty provision only after three years after the date of enactment of this bill.

3. Definition of qualified domestic trust

Trustees.--The rule that all the trustees of a qualified domestic trust must be U.S. citizens or domestic corporations would be modified to require only that one trustee be a U.S. citizen or domestic corporation, so long as no distribution can be made from the trust without the approval of that trustee.

4. Estate tax on qualified domestic trust

Exclusion from tax on distributions.--The rule excluding income distributions from the tax on distributions would be modified to exclude payments made for medical care on behalf of the surviving spouse to a person who provides the care.

5. Estate tax on qualified domestic trust

a. No tax when surviving spouse becomes U.S. citizen.--The committee previously agreed that the estate tax on qualified domestic trusts would no longer be imposed if the surviving spouse subsequently becomes a U.S. citizen if either (1) no previous taxable distributions were made from the trust, or (2) the spouse was a U.S. resident at the date of the decedent's death and at all times before becoming a U.S. citizen. Under the amendment, that tax would also no longer be imposed if a surviving spouse becomes a U.S. citizen and elects to reduce his unified credit and amounts subject to lower brackets by the amount of prior taxable distributions made from the trust.

b. Availability of estate tax benefits--Property in a qualified domestic trust would be valued by reference to alternate valuation if elected by the executor of the estate of the surviving spouse.

I. Foreign Provision: U.S. Taxation of Income Earned Through Foreign Corporations

Exception for same-country rents and royalties.--The provision clarifies that the exception from treatment as foreign personal holding company income for certain rents and royalties received from a related person with respect to property within the country under the laws of which the recipient is created or organized applies only to payments received from a related person that is a corporation.

J. Pension Provisions

1. Continuation health care rules

Notice rules.--Under present law, the employer is required to notify the plan administrator 30 days after the occurrence of certain qualifying events. The plan administrator is required to notify the affected qualified beneficiaries within 14 days after this notice of their right to elect continuation coverage. The provision permits multiemployer group health plans to adopt an alternative notice procedure relieving individual contributing employers from notifying the plan, and would permit such plans to extend the 30-day and 14-day notice periods. These provisions are to be interpreted and applied so as to ensure that qualified beneficiaries do not lose any coverage as a result of the notice rules.

The provision applies to plan years beginning on or

after January 1, 1990.

Determination of occurrence of qualifying event.--The provision permits the plan administrator of a multiemployer group health plan, rather than the employer, to determine when certain qualifying events have occurred. This provision is to be interpreted and applied so as to ensure that qualified beneficiaries do not lose any continuation coverage. The provision applies to plan years beginning on or after January 1, 1990.

Definition of qualifying event.--Under the provision a group health plan may provide that the date the qualified beneficiary loses coverage under the plan is the date of the qualifying event. In such a case, the applicable notice and election requirements, as well as the maximum period of continuation coverage, would be measured from the date coverage is lost. The provision applies to plan years beginning on or after January 1, 1990.

2. Plan investment in employer securities

The Pension Protection Act amended the definition of qualifying employer security. In general, plans that hold employer securities that do not meet the new requirements are required to dispose of the securities by 1993. The provision provides that the determination of whether employer securities meet the new requirements is to be made immediately following the acquisition of the securities and would provide a statutory exemption from the prohibited transaction rules of the Employee Retirement Income Security Act (ERISA) for plans that are required to dispose of securities that do not meet the new requirements.

3. Tax treatment of transfers of interests in public retirement plans incident to divorce

Special tax rules apply under present law to the transfer of an interest in a qualified plan pursuant to a qualified domestic relations order (QDRO). These tax rules do not apply to the transfer of interests in public plans because the QDRO rules do not apply to such plans. The provision applies the same tax rules applicable to transfers pursuant to a QDRO to transfers of interests in a public plan if the transfer is to an alternate payee pursuant to a domestic relations order (as defined in sec. 414(p)(1)(B)).

4. Miscellaneous

The provision makes clerical changes to the Single-Employer Pension Plan Amendments Act of 1986, effective as if included in such Act, clerical changes to the Employee Retirement Income Security Act of 1974, effective as if included in such Act, and clerical changes to the

previously-approved technical corrections.

K. Determination of Tax Basis of Property Transferred to Alaska Native Corporations

The provision modifies a 1988 Act provision so as to remove any retroactive effect of that provision and permit Alaska Native Corporations to rely on provisions of law that were in effect prior to the 1988 Act with respect to determining the tax basis of property transferred to them. No inference is intended regarding the interpretation of such prior law.

